HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)
(Chapter VIII Rule 32(2) (b)

Description of the Case.

Criminal Appeal No. 1429 of 2001
(Old No. 1695 of 1996)

Anand Singh ….Appellant

Vs.

State …..Respondent

Approved for reporting.

Not approved for reporting.

Date of Decision 16th September 2004.

Initial of Judge.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Appeal No. 1429 of 2001
1695 of 1996 (Old No.)

Reserved

Anand Singh
S/o Sri Teku Singh @ Tek Chand
(was posted as Lance Naik I.T.B.P. Mussoorie)
R/o Village Mahra
P.S. Gannaur
District Sonepat HARYANA …… Appellant

Versus

State …. Respondent

Sri Prem Prakash assisted by Sri S.S. Yadav learned counsel for the appellant
Sri U.P.S. Negi – Addl. Advocate General learned counsel for the State

Coram: Hon'ble M.M. Ghildiyal, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble B.C. Kandpal, J.)

This appeal arises out against the judgment and order dated 03.09.1996 passed by Sessions Judge, Dehradun in S.T. No. 27 of 1993 State Vs. Anand Singh and another, convicting the appellant Anand Singh under Sections 304-B, 498-A, I.P.C. and Section 3/4 of Dowry Prohibition Act and sentencing him for life imprisonment, 3 years rigorous imprisonment and a fine of Rs. 5,000/- and 5 years rigorous imprisonment and a fine of Rs. 15,000/- respectively.

As one accused/convict has not filed any appeal, hence, we are concerned only with regard to the appeal of accused/appellant Anand Singh which is being decided by us.

Brief facts of the prosecution case as emerged out from the record are that Smt. Lado Devi also known by the name of Sudesh D/o Netram was married to the accused/appellant Anand Singh on 08.06.1986. Netram father of Smt. Lado Devi

had provided sufficient dowry and gifts to the best of his capacity but the appellant was not satisfied, therefore, after few months of the marriage Smt. Lado Devi started complaining to her parents with regard to the harassment committed upon her for not bringing television, refrigerator, fan, sewing machine, scooter. Smt. Lado Devi had always been taunted for not bringing sufficient dowry and of coming from a pauper family.

On account of cruelty committed upon Smt. Lado Devi by her husband Anand Singh and his family members, she had started living with her parents. After a year, attempt was made by Netram, father of Smt. Lado Devi, with the help of some friends and relatives to persuade the appellant Anand Singh and his family members for accepting Smt. Lado Devi, but they refused to do so till their demands were fulfilled. Netram, thereafter, arranged some valuable articles and Smt. Lado Devi, was sent back to here in-laws place but this did not satisfy the appellant Anand Singh and his family members.

The appellant Anand Singh ultimately sent a message to Netram, father of Smt. Lado Devi for making an arrangement of Rs. 30,000/-. Netram could, however, arrange a sum of Rs. 15,000/- by selling one of his *Kachcha House* and borrowed a sum of Rs. 10,000/- from his cousin brother. Thereafter, paid an amount of Rs. 24,000/- to the appellant Anand Singh on 16.05.1992.

The appellant Anand Singh thereafter on 17.05.1992 took Smt. Lado Devi with him to Mussoorie where he was posted in I.T.B.P.. Anand Singh had taken a room on rent at the ground floor of Parvati Bhawan at Mussoorie. Several other employees of I.T.B.P. had been residing in the adjoining rooms in the same building.

On 08.06.1992 at about 9:15 A.M. Smt. Lado Devi bolted the door of the room from inside and set herself to fire after sprinkling kerosene oil on her body. On hearing cries of Smt. Lado Devi Arjun Singh, a Naik in I.T.B.P., also a neighbour came out of his room and broke open the door. Smt. Lado Devi was immediately rushed to I.T.B.P. hospital at Mussoorie where Dr. R.N. Mishra and Dr. N.K. Tyagi attended her with one lady Dr. Alka Sharma. A medical sheet was opened at the hospital and the doctors found 70% burn injuries on the whole body below the neck. General condition of Smt. Lado Devi was fair and the doctors found that she was responding verbal commands and was conscious and talking.

Adjutant R.C. Baijwan of the I.T.B.P. immediately came to the hospital after receiving information and Smt. Lado Devi gave dying declaration before the Adjutant R.C. Baijwan in the presence of the doctors. This dying declaration was recorded by the adjutant R.C. Baijwan and in her dying declaration deceased Smt. Lado Devi stated that her husband Anand Singh used to ask her to bring Rs. 1.5 lakh from her parental house. She also stated that Anand Singh used to take alcohol and beat her in connection with dowry demand. She has further stated in her dying declaration that L/Naik Rajpal, a next-door neighbour was friendly to Anand Singh and used to caste an ill eye on her. He also used to poison the ears of Anand Singh relating to the character of Smt. Lado Devi. Anand Singh on account of this had badly beaten to Smt. Lado Devi and administered to her some tablets of *'Kapoor'*. When it could not cause the desired harm, the appellant Anand Singh threatened Smt. Lado Devi by telling her either to finish herself by the evening or he would kill her. She has further stated that one day before the incident,

Rajpal made an attempt to rape her in the early hours at about 4 or 5 A.M. and on her resistance Rajpal asked her either to concede his demand or to face consequences as Anand Singh placed full reliance upon him. She further stated that she was finishing her life because of all the aforesaid ill treatment with her, by her husband.

After the dying declaration was recorded, Smt. Lado Devi was shifted to Doon hospital on account of her critical condition. Smt. Lado Devi breathed her last while she was on the way to Doon Hospital.

Jai Prakash Uttarakhandi, the landlord of Parvati Bhawan lodged a report of the incident at P.S. Mussoorie at about 13:15 hours on 08.06.1992. The police immediately got the case registered and the Investigating Officer – Dharmveer rushed to I.T.B.P. hospital and met Smt. Lado Devi before she moved out from there to Doon hospital. The Investigating Officer also recorded the statement of Smt. Lado Devi at I.T.B.P. hospital. After the death of Smt. Lado Devi, the case was altered under Section 306 I.P.C. read with ¾ Dowry Prohibition Act and subsequently 304-B I.P.C. was also added.

The police after completing investigation submitted chargesheet under Section 498-A, 306 and ¾ Dowry Prohibition Act as well as under Section 354 I.P.C. against the accused Anand Singh and Rajpal.

After submission of the chargesheet, the accused were committed to the court of Sessions and the trial court framed charges under Section 306 I.P.C. against the accused Rajpal as well as under Section 306 alternatively under Sections 304-B, 498-A I.P.C. and Sections ¾ Dowry Prohibition Act against the accused/appellant Anand Singh, on 22.09.1993.

The accused persons denied of the charges leveled against them and claimed their trial.

The prosecution in order to support its case produced P.W.1 Netram (father of the deceased) P.W. 2 Dharamveer (Investigating Officer), P.W. 3 Ram Chandra, P.W. 4 Ghamandi, P.W. 5 Jai Prakash, P.W. 6 Dr. N.K. Tyagi, P.W.7 R.C. Baijwan (Adjutant), P.W. 8 Dr. R.N. R.N. Mishra, P.W.9 Arjun Singh, P.W. 10 R.K. Kanojia (S.I.) P.W.11 Rajendra Singh (Dy. S.P.) P.W. 12 Dharamveer Singh (S.I.) P.W. 13 Dr. B.C. Ramola, P.W. 14 Mahesh Singh (constable) and P.W. 15 Om Prakash Pandey (constable).

After the evidence of the prosecution was over, the statement of the accused were recorded under Section 313 Cr.P.C. The accused adduced D.W.1 Hav. Ram Babu of I.T.B.P. in their defence.

Learned trial court, after having perused the entire evidence on record and hearing the learned counsel for the parties, convicted the accused/appellant Anand Singh under Sections 304-B, 498-A I.P.C. and ¾ Dowry Prohibition Act. The trial court sentenced the accused/appellant Anand Singh for life imprisonment under Section 304-B I.P.C., 3 years rigorous imprisonment and a fine of Rs. 5,000/- under Section 498-A I.P.C. and 5 years rigorous imprisonment and a fine of Rs. 15,000/- respectively under Section 3 of the Dowry Prohibition Act. The trial court also convicted another accused Rajpal under Section 354 I.P.C. and sentenced him 2-year rigorous imprisonment and fine of Rs. 5,000/- vide judgment and order dated 03.09.1996.

Feeling aggrieved by the aforesaid impugned judgment and order the accused/appellant Anand Singh preferred appeal

before the Hon'ble Allahabad High Court which has been transferred to this Court after creation of Uttaranchal, for disposal.

We have heard learned counsel for the parties and perused the record.

Learned counsel for the appellant has argued before us that it is not established on the basis of the record that the marriage of Smt. Lado Devi with the appellant Anand Singh ever took place. It has also been argued that the provision of Section 304-B I.P.C. would not be attracted in a case of mistress, as the same would only be effective when the deceased Smt. Lado Devi was a legally wedded wife. It has also been submitted that the death should have occurred within a period of 7 years of marriage. It has also been submitted that the evidence do not disclose anywhere that there had ever been any demand of dowry and the deceased was subjected to the cruelty on account of demand of dowry. It has further been submitted that the deceased Smt. Lado Devi committed suicide on account of the humiliation and advances made by another accused Rajpal. It has further been submitted that the alleged dying declaration in the present case appears to be fabricated and tainted, as the physical and mental condition of the deceased could not be said to be fit for giving the dying declaration in view of the medical evidence available on record.

In order to consider the arguments advanced before us, it would have to be assessed as to whether the deceased committed suicide on account of the humiliation and advances made by Rajpal or on account of cruelty committed upon her by her husband, demanding dowry. It has also to be assessed that, if the deceased Smt. Lado Devi had committed suicide

otherwise than under normal circumstances as a result of cruelty committed upon her on account of demand of dowry then the same would bring the offence committed by the appellant under the provisions of Section 304-B and Section 498-A of the I.P.C.

Before assessing the evidence on record, it will be pertinent to reproduce certain provisions of law in order to make the picture clear.

Section 113-A of Indian Evidence Act which deals with presumption as to the abetment of suicide by a married woman runs as follows:-

> ***''113-B Presumption as to abetment of suicide by a married woman.*** *When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and is shown that she had committed suicide within a period of seven years from the date of her marriage, and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such, suicide had been abetted by her husband or by such relative of her husband.*
>
> ***Explanation*** *For the purpose of this Section, "Cruelty" shall have the same meaning as in Section 498-A of the Indian Penal Code (45 of 1860)"*

Further Section 113-B of Indian Evidence Act deals with the presumption as to dowry death in following manner:-

> ***''113-B Presumption as to dowry death*** *– When the question is whether a person has committed the dowry death of woman and it is shown that soon before*

her death such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation: *For the purposes of this Section "dowry death" shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860)"*

Provision of Section 306 I.P.C. would also be relevant, which runs as follows:-

"Section 306 – Abetment of suicide – *If any person commits suicide whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

Further provision of Section 304-B I.P.C. which deals with dowry death would also be pertinent to be perused and it runs as follows:-

"Section 304-B Dowry death -

1) *Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand for dowry, such death shall be called " dowry death" and such husband or relative shall be deemed to have caused her death.*

Explanation*: For the purposes of this sub-Section dowry shall have the same meaning as in*

Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961)"

2) *Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."*

"Section 498-A which deals with cruelty by husband or relative of husband is as follows:-

"***Section 498-A*** *– Husband or relative of husband of a woman subjecting her to cruelty – Whoever being the husband or the* relative *of a woman, subject such women, to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation:- *For the purposes of this Section, 'cruelty' means:-*

a) Any willful conduct which is of such a nature as is likely to drive, the woman to commit suicide or to cause grave injury or danger to life, limb, or health (whether mental or physical) of the woman; or

b) Harassment of a women where such harassment is with a view to coercing her or any person related to her to meet many unlawful demand for any property or valuable security is on account or failure by her or any person relating to her to meet such demand."

Again, it would be pertinent to mention few provisions of Dowry Prohibition Act. Section 2 of Dowry Prohibition Act defines dowry as follows:-

"2. ***Definition*** **–** *In this Act, unless the context otherwise requires:-*

i) "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

a) by one party to a marriage to the other, or

b) by the parents of either party to a marriage or by any other persons, to either party to the marriage, or to any other person; at or before or after the marriage as consideration for the marriage of the said parties, but does not include dower or Mehi in the case of persons to whom the Muslim Personal Law (Shariat) applies.

Explanation I: *For the removal of doubts it is hereby declared that any presents made at the time of marriage to either party to the marriage in the form of cash ,ornaments, clothes, or other articles, shall not be deemed to be dowry within the meaning of this Section, unless they are made as consideration for the marriage of the said parties.*

Explanation II. *The expression valuable security', has the same meaning as in Section 30 of the Indian Penal Code (45 of 1960)*

ii) "marriage expenses" shall include expenses incurred directly or indirectly at or before the mieeage on-

a) Thakka, Segai, Tikka, Shagan and Milni ceremonies

b) *The gifts made by one party to a marriage to the other party to the marriage or by the parents, grand parents and brothers of either party to a marriage, to either party to the marriage or the blood relations thereof.*

c) *Illuminations, food and the arrangements for serving food to them members of the marriage party and other expenses incidental thereto.*

Explanation III:

a) *For the removal of doubts, it is hereby declared that any gift made by a person other than those specified in sub clause.*

b) *At the time of marriage to either party to the marriage shall not be deemed to be marriage expenses shall not be deemed to be marriage expenses (ide Haryana Act 33 of 1976, Section 2 (w.e.f. 11.08.1966)*

Further Section 8-A of the Dowry Prohibition Act, if perused, it reveals that the shifts of burden of proof would be on the accused to show that he had not committed the offence. Section 8-A runs as follows:-

> ***"Section 8-A Burden of proof in certain cases -*** *Where any person is prosecuted for taking or abetting the taking of any dowry under Section 3, or the demanding of dowry under Section 4, the burden of proving that he had not committed an offence under those sections shall be on him."*

Now in the light of the aforesaid legal provisions, we have to scrutinize evidence in order to see as to there was Demand of dowry by the appellant and whether there was any

harassment or ill treatment meted out to Smt. Lado Devi deceased on account of such demand.

The first point for consideration in the instant case is whether the deceased was married with the appellant Anand Singh or she was living with Anand Singh as his mistress.

Learned counsel for the appellant has vehemently stressed on the paper Ex. Ka. 7 – dying declaration which runs as follows:-

"MERA PATI LANS NIAK ANAND SINGH MUJHE GHAR SE BHAGA KAR LAYA THA.''

Learned counsel for the appellant has thus submitted that in view of the aforesaid statement given by the deceased in her dying declaration it cannot be presumed that the deceased Smt. Lado Devi was illegally wedded wife of the appellant Anand Singh.

We fail to appreciate the argument of the learned counsel for the appellant as the word *" BHAGA KAR"* could have appeared in the dying declaration on account of some mistake in hearing in hearing by the Officer who recorded the dying declaration. In the dying declaration itself the deceased, at several places referred the appellant Anand Singh as her husband, hence, there cannot be any confusion that Smt. Lado Devi deceased was the wife of the appellant Anand Singh.

Further Netram (P.W.1) as well as Dharamveer (P.W.2), father and brother of the deceased respectively have deposed that the deceased Smt. Lado Devi was married to Anand Singh. Similarly, Ram Chander (P.W.3) has also deposed the same in his evidence before the Court. The appellant Anand Singh in his statement under Section 313 Cr.P.C. has also admitted the fact of his marriage with Smt. Lado Devi. The invitation card

pertaining to the marriage of Smt. Lado Devi with the appellant Anand Singh available on the record clearly indicates that the marriage between Smt. Lado Devi and Anand Singh was solemnized on 08.06.1986 at Sonipat.

Learned counsel for the appellant has cited before us following decisions in support of his submission that the marriage would include only the valid marriage as provided in Hindu Marriage Act:-

1) AIR 1982 SC 1021 (Kake Singh Vs. State of M.P.)
2) 1994 Suppl. (2) SCC 539 (Pr. 3) (Mani Ram Vs. State of M.P.)
3) (1999) 7 S.C.C. 695 (Pr. 8) (Paparambaka Rosamma Vs. State of M.P.)
4) (2002) 1 SCC 527 (Panch Deo Singh Vs. Bihar)
5) (2001) 5 SCC 254 (Pr. 10) (Uka Ram Vs. Raj)
6) (2001) 6 SCC 407 (Pr. 7, 14, 20) (Arvind Singh Vs. State of Bihar)
7) (2002) 7 SCC 56 (Pr. 32) Ramilaben Hasmukhabha Krishi Vs. State of Gujrat)

We have gone through the aforesaid decisions cited before us and we are of the view that these judgments do not help the appellant in any manner, as we have already observed that the marriage card available on the record clearly establishes that the mirage of Smt. Lado Devi was solemnized with Anand Singh on 08.06.1986 at Sonipat.

The prosecution witnesses produced before the Court have also categorically deposed before this Court that Smt. Lado Devi was legally wedded wife of Anand Singh.

Learned counsel for the appellant has submitted before this Court that the prosecution has utterly failed to establish that

the marriage of Smt. Lado Devi with the appellant Anand Singh had ever took place.

Again we fail to appreciate this argument as we have already observed that father and brother of the deceased Smt. Lado Devi have clearly deposed that Smt. Lado Devi was married with the appellant Anand Singh in the year 1986 and she died within a period of seven years of her marriage otherwise than under normal circumstances. The specific question was put to the accused under Section 313 Cr.P.C. with regard to the marriage with Smt. Lado Devi deceased on 08.06.1986 and the accused /appellant answered this question in affirmative. Therefore, it is quite clear that Smt. Lado Devi was married with Anand Singh and she died otherwise than under normal circumstances within a period of seven years of her marriage.

As regard, the suicide committed by Smt. Lado Devi, there is ample evidence on record which establishes that on 08.06.1992, Smt. Lado Devi sprinkled kerosene oil on her body and thereafter set her ablaze in a room which was in the tenancy of her husband accused – Anand Singh and on account of the burn injuries sustained by her, she died on the same day.

In this regard, the evidence of Arjun Singh (P.W.9) would be relevant. This witness is the next door neighbour in the same premises and he has deposed that at about 9:15 A.M. on the date of the incident, he heard shrieks and cries of Smt. Lado Devi from inside her room. The room was bolted from inside and the smoke was coming out. He has further deposed that the door was broken and Smt. Broken and Smt. Lado Devi was taken out and rushed to I.T.B.P. hospital. The Adjutant/Assistant Commandant – R.C. Baijwan (P.W.7) of the academy was

thereafter informed and this fact has also confirmed by R.C. Baijwan (P.W.7) of I.T.B.P. Academy.

Dr. Narendra Kumar Tyagi (P.W.6) also confirmed this fact in his deposition that Smt. Lado Devi was brought to the hospital in a burnt condition on 08.06.1992 and he along with Dr. R.N. Mishra (P.W.8) attended her that time. Dr. R.N. Mishra (P.W.8) has also been produced and he corroborated the statement of Dr. Narendra Kumar Tyagi (P.W.6). Both the doctors have also deposed that it was decided to Shift Smt. Lado Devi to Doon Hospital on account of her critical condition.

All the aforesaid evidence clearly establish that Smt. Lado Devi died on account of burn injuries suffered by her. In the dying declaration itself Smt. Lado Devi had stated that she was finishing herself because of the cruelty committed upon her by her husband. She had also stated that the neighbour Rajpal used to cast an evil eye on her and wanted to establish illicit relations. On her refusal, Rajpal poisoned the ears of Anand Singh who had badly beaten her. She has also stated that her husband tried to kill her by administering Napthaline (Kapoor) pills to her but they did not work. Thereafter, her husband told her either to finish herself or he would kill her. Therefore, it is quite clear that Smt. Lado Devi committed suicide on 08.06.1992 by sprinkling kerosene oil on her body and set her ablaze, on account of aforesaid cruelty.

It is now to be decided whether the suicide committed by the deceased Smt. Lado Devi is a result of cruelty committed upon her by her husband on account of demand of dowry or not.

In order to reach to a definite conclusion, we have already referred certain provisions in forgoing paragraphs.

Now, on the basis of the assessment of evidence, it is to be decided as to whether there was demand of dowry or other valuable property and whether there was any harassment or ill treatment meted out to Smt. Lado Devi on account of such demand.

The dying declaration itself shows that the appellant Anand Singh told the deceased Smt. Lado Devi to arrange Rs. 1,50,000/- from her parents' house and he used to beat her quite often after consuming alcohol and repeated his demand for additional dowry. The dying declaration, therefore, clearly reveals that there is demand of dowry by Anand Singh and unnatural death of Smt. Lado Devi relates to the demand and consistent harassment including cruelty. The statement of Netram (P.W.1), Dharamveer (P.W.2) as well as their complaint to S.S.P. Dehradun and S.P. Sonipat reveal that soon after the marriage, appellant Anand Singh and his family members started harassing Smt. Lado Devi for bringing meager dowry and lowering their prestige in the society. Smt. Lado Devi few months after the marriage told her parents and other family members with regard to the demand of television, fridge, fan, sewing machine, scooter from the side of her in-laws. Thus the oral and documentary evidence support the version of dying declaration of Smt. Lado Devi that there was demand of dowry and money from the side of Anand Singh and she was being harassed in order to keep the demand fulfilled.

Netram (P.W.1) has clearly deposed that he sold his *Kachcha House* for a consideration of Rs. 15,000/- and also borrowed a sum of Rs. 10,000/- from his brother Ghamandi, (P.W.5) and thereafter he paid Rs. 24,000/- to the appellant Anand Singh. Ghamandi (P.W.4) has deposed that he actually

lent Rs. 10,000/- to Netram (P.W.1) for this purpose and a sum of Rs. 24,000/- was paid by Netram (P.W.1) to the appellant Anand Singh in his presence.

Ram Chandra (P.W.3) has also deposed that Netram (P.W.1) has paid Rs. 24,000/- to the appellant Anand Singh in his presence.

Netram (P.W.1) in the report Ext. Ka 1 has mentioned that the appellant Anand Singh insisted him for money on the pretext that he was going to Mussoorie where the arrangements for living will have to be made. This witness has also stated that about 15 days prior to the incident Lado Devi alone had come to him to convey demand of her husband for Rs. 40,000/- to 50,000 then he expressed his inability to arrange that big amount and Smt. Lado Devi went back. Thereafter, this witness, however, arranged for Rs. 24,000/- which he ultimately paid to the appellant Anand Singh. Thus it is clear that Anand Singh was asking for money from Netram (P.W.1) father of deceased Lado Devi on the ground that he was taking Smt. Lado Devi with him to Mussoorie where they will settle and for that purpose they needed money.

A careful scrutiny of the evidence, suggests that the witness as examined by the prosecution are wholly reliable and there is no material inconsistency or contradiction in their deposition. It is clear that the unnatural death of Smt. Lado Devi within seven years of her marriage had occurred. There is also clear evidence pertaining to the demand of dowry and harassment as well as cruelty to Lado Devi deceased in connection with the said demand of dowry. The demand made by Anand Singh clearly comes within the definition of dowry under Section 8-A of the Dowry Prohibition Act. Similarly,

presumption under Sections 113-A and 113-B of Indian Evidence Act pertaining of abetment to commit suicide and of causing dowry death of Smt. Lado Devi can be drawn against the appellant Anand Singh. It is true that there are rebuttable presumptions but under the circumstances of the present case, the appellant has not been able to rebut it by direct or indirect evidence nor are there circumstances to rebut the same.

Learned counsel for the appellant has further argued that the dying declaration in the present case cannot be said to be trustworthy and the conviction could not have been warranted on the basis of the said dying declaration. It has been submitted that before recording the dying declaration no certificate of the doctor was obtained. It has also been submitted that the sedative like Pethidine injection was administered hence under these circumstances the dying declaration cannot be said to be reliable.

Following decisions have been cited before us in support of the arguments:

1) AIR 1982 SC 1021 (Kake Singh Vs. State of M.P.)
2) 1994 Suppl. (2) SCC 539 (Pr. 3) (Mani Ram Vs. State of M.P.)
3) (1999) 7 S.C.C. 695 (Pr. 8) (Paparambaka Rosamma Vs. State of M.P.)
4) (2002) 1 SCC 527 (Panch Deo Singh Vs. Bihar)
5) (2001) 5 SCC 254 (Pr. 10) (Uka Ram Vs. Raj)
6) (2001) 6 SCC 407 (Pr. 7, 14, 20) (Arvind Singh Vs. State of Bihar)
7) (2002) 7 SCC 56 (Pr. 32) Ramilaben Hasmukhabha Krishi Vs. State of Gujrat
8) (2003) 1 SCC 112 (Pr. 3) Chacko Vs. State of Kerala

9) (2001) 6SCC 118 (Pr. 12, 21, 23) Laxmi Vs. Om Prakash

We have carefully gone through the decisions cited before us and we are of the view that these decisions are not applicable to the facts and circumstances of the present case.

In the instant case, the dying declaration of the deceased Smt. Lado Devi was recorded in the presence of doctors who were attending her. The dying declaration has been recorded by an uninterested Government Officer who also possessed power of the Magistrate. The doctors have deposed in their evidence that Smt. Lado Devi was in a fit mental condition at the time of making her statement and there is a note to this effect in the injury report as well as medical case sheet. Both the attending doctors – Dr. Narendra Kumar Tyagi (P.W.6) and Dr. R.N. Mishra (P.W.8) have also signed at the end of the statement (dying declaration). There is absolutely no allegation, which may suggest that the Adjutant – R.C. Baijwan (P.W.7) of the I.T.B.P. as well as doctors had any interest whatsoever to create false evidence against the appellant – Anand Singh.

We thus have absolutely no doubt in our mind that the statement contained in dying declaration Ext. Ka. 7 was given by Smt. Lado Devi to Adjutant – R.C. Baijwan (P.W.7) in the presence of the attending doctors.

Vehement arguments have been raised by the learned counsel for the appellant against the dying declaration by submitting that the deceased could not have been in a position to give such statement on account of sedative like Pethidine injection administered to her immediately after she was taken to hospital.

We find ourselves wholly unable to accept the arguments as we do not have any doubt in the genuineness or the

credibility of the dying declaration as the dying declaration appears to be wholly coherent and clear.

It is noteworthy to mention here that at the time Smt. Lado Devi gave her statement, nobody from her parents' family was around her nor any other person who could have any enmity or ill motive against the accused – Anand Singh was present there. Therefore, there was absolutely no chance of anyone influencing Smt. Lado Devi by making any suggestion etc. Smt. Lado Devi had been living at Mussoorrie in the room under the tenancy of the appellant – Anand Singh, hardly few days prior to the occurrence. Therefore, she had given her own version in her statement and there does not appear to be any chance of any type of influence on her mind. Smt. Lado Devi had deposed in her statement, clearly, against her husband. The statement has been given immediately after the incident. She had suffered serious burn injuries and was definitely under the fear of death.

As far as the physical and mental condition of the deceased Smt. Lado Devi is concerned, we also find that the doctors noted down in the medical case sheet that the general condition of the patient was fair and she was responding to verbal command. It has also noted down that she was conscious and talking. Smt. Lado Devi was taken to hospital within 15 to 20 minutes of the actual time of the incident and the doctors have clearly deposed before the Court also that when Lado Devi was brought to the hospital, she was wholly conscious and was talking. She was properly answering as well. Although, the condition was serious but the patient was wholly conscious and was giving rational replies of the questions put to her by R.C. Baijwan (P.W.7). R.C. Baijwan (P.W.7) has also

stated before the Court that Smt. Lado Devi remained fully conscious till her statement was concluded. He has also stated that the doctors also told him that Smt. Lado Devi was in a position to give her statement.

It is true that in the dying declaration, there is no certificate recorded by the doctors as to Smt. Lado Devi was fully conscious and was in a position to give her statement. But this circumstances only does not discredit the dying declaration especially in view of the Statement of the witnesses who have clearly deposed that Smt. Lado Devi was in a fit physical and mental stage. There is no scope for imagination, surmises and conjectures as it is clear that Smt. Lado Devi was in a fit condition of mind to give the statement.

The Hon'ble Apex Court in the cases reported in ***JT 2002 (6) SC 313 Laxman Vs. State of Maharashtra, (2003) 6 Supreme Court Cases 443 P.V. Radhakrishna Vs. State of Karnataka*** *as well as* ***2003 (1) J. Cr. C. 91 Rambai vs. State of Chhattisgarh,*** has clearly observed that if a person recording the dying declaration is satisfied that the declarant is in a fit medical condition to make dying declaration then such dying declaration will not be invalid solely on the ground that his condition is not so certified by a doctor.

It is true that the witness Dr. R.N. Mishra (P.W.8) had admitted that Pethedine is a sedative drug and gradually leads the patient towards unconsciousness. This witness has further deposed that Pethedine injection starts showing its effect within 10 to 15 minutes. The record shows that the Adjutant – R.C. Baijwan (P.W.7) reached in the hospital within 5 to 10 minutes and it is, therefore, quite possible that the deceased –Smt. Lado Devi might not have been unconscious by the effect of

Pethedine injection when her statement was recorded by the doctor on account of her excessive pain. The Pethedine injection becomes not so effective and may not be in position to put the patient in sedation when there is severe excessive pain.

We do not find any material on the record which may suggest that the dying declaration was either fabricated or tainted or the deceased was not in a fit mental condition at the time of the recording of dying declaration.

On the basis of the aforesaid discussion we are of the view that the appellant - Anand Singh had committed an offence punishable under Section 304-B I.P.C. He is, further found guilty of committing offence punishable under Section 498-A I.P.C. Similarly, on the basis of the evidence available on record the charge under Section 3 of the Dowry Prohibition Act against the appellant is also established beyond reasonable doubt.

We do not find any infirmity in the judgment passed by the trial court holding the appellant guilty for the charges leveled against him. It is the settled law propounded by the Hon'ble Supreme Court in the case ***2002 Supreme Court (Cri) 48 Satvir Singh Vs. State of Punjab*** that if the dowry related death is a case of suicide, it would fall within the purview of Section 304-B I.P.C. as suicide is one of the modes of death falling within the ambit of Section 304-B I.P.C.

Lastly it would be pertinent to mention here that there is another strong circumstance which points out the guilt of the appellant, i.e. conduct at the time of occurrence and immediately thereafter. The record shows that the appellant did not reach the hospital where Smt. Lado Devi was rushed. He also did not go with the victim from I.T.B.P. hospital Massoorie

to Doon hospital, Dehradun where she was shifted for proper care and treatment.

He was also not present when the inquest report was prepared and the body was finally cremated. It is worthy to mention here that the dead body of Smt. Lado Devi was disposed of by the police as unclaimed and the appellant – Anand Singh told his family members at Sonipat that the deceased had died in a motor accident. The inquest also does not include the name of Anand Singh appellant as a witness of the inquest. Mahesh Singh (P.W. 14) - constable who had carried the dead body of Smt. Lado Devi in sealed cloth from Doon Hospital to the mortuary for post-mortem, has stated that at the mortuary no relative of the deceased including his husband Anand Singh was present. This conduct of the appellant – Anand Singh in keeping himself away and withdrawn at every stage is a strong indicating of his guilt.

For the reasons stated above, we are, therefore, satisfied that the prosecution has successfully proved its case beyond reasonable doubt against the appellant – Anand Singh. We, therefore, concur with the view of the trial court and affirm the conviction and sentence of the appellant – Anand Singh.

The appeal is accordingly dismissed.

The record of the court below be returned immediately & learned C.J.M. concerned is directed to take appropriate steps in order to take the appellants into custody to serve out the sentence imposed against him by the trial court.

(B.C. Kandpal, J) **(M.M. Ghildiyal, J)**

September 16, 2004
ASWAL